

**Deposition of Parrish Fortenberry**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

JON CHRISTOPHER EVANS  
AND JOINTLY ADMINISTERED  
RELATED CASES  
DEBTORS.

Case No. 09-03763-NPO

Chapter 7

\*\*\*\*\*

G&B INVESTMENTS, INC.

PLAINTIFF

V.

ADV. PROC. NO. 10-00040-NPO

DEREK A. HENDERSON, TRUSTEE  
FOR THE BANKRUPTCY ESTATE OF  
JON CHRISTOPHER EVANS, ET AL.

DEFENDANTS

\*\*\*\*\*

30(b)(6) DEPOSITION OF  
MISSISSIPPI VALLEY TITLE INSURANCE COMPANY,  
THROUGH ITS REPRESENTATIVE,  
PARRISH FORTENBERRY

Taken at the offices of  
Adams and Reese,  
111 Capitol Street, Suite 350,  
Jackson, Mississippi,  
on Friday, November 19, 2010,  
beginning at approximately 9:00 a.m.

\*\*\*\*\*

APPEARANCES NOTED HEREIN

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**Deposition of Parrish Fortenberry**

2

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36

**Deposition of Parrish Fortenberry**

3

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ALSO PRESENT:

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**Deposition of Parrish Fortenberry**

54

1 yes. So, yeah.

2 Q. Okay. Now, are the approved  
3 attorneys, as far as Valley is concerned, allowed  
4 to market themselves to banks as approved  
5 attorneys for Valley?

6 A. No. Well, we would not want them  
7 to -- I mean, we don't control what they do or  
8 what they say, so. . . If we found out they  
9 were, we would take them off our list, typically.

10 Q. Well, the word "market" is a big  
11 word.

12 A. Right.

13 Q. I don't mean publish things in the  
14 newspaper.

15 A. Right.

16 Q. I don't mean put things on  
17 television. What I mean is, if they see a banker  
18 at lunch, can they say, Hey, you know, I happen to  
19 be an approved attorney for Valley, and I'd be  
20 happy to talk to you about any closing work,  
21 property transaction work the bank may have?

22 A. I don't think we have any stated  
23 rules one way or the other on that.

24 Q. Doesn't that, in fact, happen,  
25 though?

**Deposition of Parrish Fortenberry**

55

1 MR. JONES: Object to the form; calls  
2 for speculation.

3 THE WITNESS: I would assume it does.  
4 And if the bank has any questions, they're  
5 certainly capable of calling and asking if the  
6 person is, and we'll tell them if they are.

7 MR. LISTON, CONTINUED:

8 Q. Right. And, in fact, the banks would  
9 want the attorneys to tell them that, would they  
10 not, because they'd want to know which attorneys  
11 can do the work, send it to Valley, get the title  
12 insurance issued, that they would like to have  
13 before they go do the transaction?

14 MR. JONES: Object to the form; calls  
15 for speculation.

16 THE WITNESS: The -- I've never  
17 really seen any bank care where it's coming from,  
18 the title insurance. It's typically that they can  
19 obtain title insurance. So, I mean, about the  
20 question of whether or not, you know, because it's  
21 Valley, I don't know.

22 MR. LISTON, CONTINUED:

23 Q. Are there two kinds of title  
24 insurance policies, roughly? Lender policies and  
25 owner policies?

**Deposition of Parrish Fortenberry**

61

1 MR. LISTON, CONTINUED:

2 Q. Okay.

3 A. I don't know. I'll say that. One of  
4 the problems with fraud is just -- it's so easy to  
5 record fraudulent deeds and fraudulent  
6 cancellations, that even an independent search,  
7 you're not going to pick up fraud is the problem.

8 Q. A glaring fraud you might pick up,  
9 though?

10 MR. JONES: Object to the form.

11 THE WITNESS: A glaring fraud, you  
12 might, but not one committed -- I mean, an  
13 attorney that knows can look it up, knows how to  
14 fill out satisfactions and cancellations or deeds.  
15 It would be hard to pick those up.

16 MR. LISTON, CONTINUED:

17 Q. Well, let's talk about a particular  
18 fraud. In the 2009 White Oaks loan, Mr. Charles  
19 Evans certified to Valley that the property was  
20 owned at the time of his certification by G&B  
21 Investments.

22 A. Okay.

23 Q. Right? You're aware it was not?

24 A. It's -- my recollection is it was  
25 not. I mean, without a title report, I don't

**Deposition of Parrish Fortenberry**

69

1 Q. Where did Charles Evans represent  
2 he -- to Valley that he was representing the Bank  
3 of Forest? Have you seen that in writing?

4 A. No, not in writing. Well, he called  
5 and asked on their behalf, and that's typically  
6 representing the lender and the purchaser.

7 Q. How do you know he wasn't  
8 representing a guy named Chris Evans?

9 A. I believe aren't there cases that say  
10 that, the ethics rules?

11 Q. Are we going to talk some law?

12 A. Not really.

13 Q. Do you want to talk law?

14 A. Not particularly.

15 Q. I'm just asking you factually.

16 A. Factually, no.

17 Q. You adopted the word "their." I want  
18 to find out what your basis is. Do you know for a  
19 fact --

20 A. Oh, no.

21 Q. -- Charles Evans was representing the  
22 Bank of Forest?

23 A. No.

24 Q. Okay. And approved attorneys  
25 transmit the binder fees and the premiums to

**Deposition of Parrish Fortenberry**

70

1 Valley, don't they?

2 A. Typically.

3 Q. Okay. And the approved attorneys  
4 receive from Valley the title commitments?

5 A. Typically.

6 Q. And deliver them to whoever needs  
7 them, correct?

8 A. Typically, yes.

9 Q. And the approved attorneys receive  
10 from Valley the title policies, and, again,  
11 deliver those to whoever might need them, right?

12 A. Yes, typically.

13 Q. In the typical course of these  
14 things, I know there are probably exceptions, but  
15 Valley has little to no contact with the insured  
16 before the title policy is issued, correct?

17 A. Correct.

18 Q. Okay. So the only person with whom  
19 the insured would be in contact, as a conduit for  
20 Valley, is going to be that approved attorney?

21 A. Typically. I mean, they're certainly  
22 able to call us and ask if they have something --  
23 any questions.

24 Q. Okay. I've heard some number or seen  
25 some number in this litigation of the total amount



**Deposition of Parrish Fortenberry**

71

1 of -- it may be premiums that Valley received due  
2 to any acts of Charles Evans. And by "acts," I  
3 mean applications for commitments or policies.  
4 What's that number?

5 A. The -- I don't know the breakdown.  
6 The total of commitment fees, title insurance  
7 premiums and fees for endorsements, there were  
8 some endorsements to policies, it was about  
9 195,000 over this course of -- since 2002 to 2009.

10 Q. Is it fair to say -- I know the  
11 payout is more than the premium. Mr. Jones  
12 pointed that out the other day.

13 A. Slightly.

14 Q. But is it fair to say with every  
15 transaction that Charles Evans submitted for  
16 approval to Valley, Valley had a financial  
17 interest in that transaction? That was a bad  
18 question.

19 A. Uh-huh (affirmative response).

20 Q. It was vague. Let me rephrase it.

21 A. Please.

22 Q. Every time Charles Evans did anything  
23 on behalf of the Bank of Forest in regards to the  
24 2008 or 2009 White Oaks loan, Valley made or stood  
25 to make either a binder fee or a premium off that?

**Deposition of Parrish Fortenberry**

72

1           A.       Well, anything -- well, if he  
2 submitted an application and -- for a title  
3 certificate for a commitment, then, yes, we would  
4 make a fee off the commitment fee or if he  
5 submitted it for a premium -- a policy and we  
6 issued the policy, yes, we would make a premium  
7 off the policy.

8           Q.       And those are the two things he did,  
9 right? He submitted applications for commitments  
10 for policies --

11          A.       Just in general --

12          Q.       -- that involved the Bank of Forest?

13          A.       Well, in 2008, on that loan, yes, on  
14 both. On the 2009, he only submitted the first  
15 certificate for a commitment.

16          Q.       Didn't he submit an application for  
17 the policy in 2009, or did it not get that far?

18          A.       No, it did not get that far.

19          Q.       Okay. That's fine.

20                   All right. Let's look at documents.  
21 I'm going to get you guys on that side of the  
22 table to shuffle through these, if that's okay.  
23 Take a look at No. 1, please, sir.

24          A.       Okay.

25          Q.       This is a brochure -- or a copy of a

**Deposition of Parrish Fortenberry**

83

1 A. Since then?

2 Q. Yes.

3 A. A little bit, yes.

4 Q. Tell me how.

5 A. I'm trying to think of how it's  
6 different. We changed the certification form,  
7 require actual copies of documents now. Do a  
8 little -- do additional background search on if  
9 somebody wants to become an approved attorney or  
10 an agent. I think those are the fundamental  
11 changes.

12 Q. Okay. I think y'all -- before  
13 September 2009, you didn't charge the approved  
14 attorneys a fee to make an application for  
15 approved attorney, and now they are charged a fee?

16 A. Right.

17 Q. What other screening criteria do you  
18 have that you didn't have then?

19 A. I think that's everything. I think  
20 it's just the investigation. With that fee, they  
21 go back and run some different independent  
22 searches. So. . .

23 Q. Okay. You mentioned that the form of  
24 the application and title certification has  
25 changed and now attorneys are required to attach

**Deposition of Parrish Fortenberry**

84

1 documents?

2 A. Right.

3 Q. What kind of documents?

4 A. The vesting deed and the deeds of  
5 trust.

6 Q. Okay. So in other words, when an  
7 attorney represents to Valley that fee simple  
8 title of the property is in a certain party,  
9 they're actually required to attach that  
10 instrument which shows that fee simple title is in  
11 that party, right?

12 A. Right. There would be such a  
13 document, yes.

14 Q. Okay. Was it feasible for Valley to  
15 have had those measures before 2008?

16 MR. JONES: Object to the form; calls  
17 for speculation.

18 THE WITNESS: Yes.

19 MR. LISTON, CONTINUED:

20 Q. Any reason you can tell me why Valley  
21 did not have those measures before 2008?

22 A. We've been in business for 70 years.  
23 Never been a necessity or a problem or needed it.  
24 And so, I mean, there are certainly -- you can  
25 forge -- unfortunately, you can forge deeds and

**Deposition of Parrish Fortenberry**

85

1 deeds of trust fairly easily. I believe in this  
2 very transaction -- not in Bank of Forest, but in  
3 this whole Evans mess, he forged several reported  
4 documents. So. . .

5 Q. Okay. Let me ask this question:  
6 Even the best attorneys can make an error in their  
7 title searches, I'm sure?

8 A. Yes.

9 Q. But -- and I'm not going to ask about  
10 those.

11 A. I think Lawrence is admitting over  
12 there.

13 Q. That's fine. And I'm not asking  
14 about instances in the past where Valley has found  
15 that a lawyer breached, you know, whatever the  
16 standard of care was doing a title search.

17 MR. JONES: Object to the form.

18 MR. LISTON, CONTINUED:

19 Q. I'm asking about instances where  
20 Valley determined after the fact that a  
21 certification was fraudulent; in other words, it  
22 was a misrepresentation by the lawyer.

23 A. Uh-huh (affirmative response).

24 Q. Has that ever arisen before the  
25 Charles Evans debacle, that you know of?

**Deposition of Parrish Fortenberry**

139

1 loan was fraudulent?

2 MR. JONES: Object to the form.

3 You can answer to the extent you  
4 know.

5 THE WITNESS: It was wrong whether it  
6 was fraud -- you know, I guess that goes to his  
7 intent, and so. . .

8 MR. LISTON, CONTINUED:

9 Q. It was -- it was a misrepresentation.  
10 Is that a better word?

11 A. Yeah.

12 Q. Valley agrees that he made a  
13 misrepresentation in those regards?

14 MR. JONES: Object. You said "it."  
15 What are you referring to as "it"?

16 MR. LISTON, CONTINUED:

17 Q. At least the 2009 White Oaks  
18 certification, you would agree that was a  
19 misrepresentation by Evans?

20 MR. JONES: The application and  
21 certification from Charles Evans to --

22 MR. LISTON, CONTINUED:

23 Q. The application.

24 A. Yes. Well, I'm sorry, can you --

25 Q. Sure. Let me --

**Deposition of Parrish Fortenberry**

140

1 A. It's getting confusing.

2 Q. Yeah, we're going back and forth.

3 Let me state this the way I need to.

4 Does Valley agree that in the 2009  
5 White Oaks loan application for the commitment,  
6 that Evans provided to Valley, that it contained  
7 misrepresentation about who the fee simple owner  
8 of the property was?

9 MR. JONES: Object to the form to the  
10 extent it calls for saying a commitment is a  
11 representation.

12 THE WITNESS: Yes.

13 MR. LISTON, CONTINUED:

14 Q. And Valley filed a suit against Evans  
15 alleging that he had engaged in fraudulent conduct  
16 as referenced by this paragraph, right?

17 A. Yes.

18 Q. So consequently, Valley must have had  
19 a good faith belief of that fact before it filed  
20 this, correct?

21 A. Yes.

22 Q. Paragraph No. 8 of this affidavit  
23 reflects that Valley relied on title certificates  
24 provided by Charles Evans to issue over a hundred  
25 title insurance policies to various lenders,